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August 9, 2002

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Petition of KeySpan Energy Delivery New England for Approval of its Long-Range Forecast and Resource Plan for the five-year period 2001/02 though 2005/06 pursuant to G.L. c. 164, §§ 69 (I) *et. seq.*, D.T.E. 01-105

Dear Secretary Cottrell:

In this case, KeySpan Energy Delivery New England ("KeySpan" or the "Company") has filed a ("Petition") seeking the Department's approval of its Long-Range Resource and Requirements Plan ("Supply Plan") for the forecast period 2001/02 through 2005/06.[1] The Attorney General hereby addresses the Petition by submitting this letter as his Initial Brief under the schedule established by the Department of Telecommunications and Energy ("Department"). The Department should reject the Supply Plan and require the Company to submit a revised plan because: (1) the Company has failed to meet design day requirements; (2) the Supply Plan does not reflect an economic use of the HubLine; (3) the Company has failed to account for the transfer or loss of a substantial number of Cape Cod customers; and (4) the Company has failed to account for the return of substantial pipeline capacity arising from the Enron bankruptcy case. For these reasons, the Department should reject the Supply Plan and require the Company resubmit a new revised plan which reflects corrections to the deficiencies raised herein.

I. STANDARD OF REVIEW

The Department is required to ensure "a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost." G.L. c. 164, § 69I. The Department reviews the long range forecast of each gas utility to ensure that the forecast

[1] This matter is related to D.T.E. 02-18, the Company's request for approval of firm gas transportation agreements with Algonquin Gas Transmission Company.

accurately projects the gas sendout requirements of the utility's market area. G.L. c. 164, 69I. A forecast must reflect accurate and complete historical data, and reasonable statistical projection methods. G.L. c. 164, § 69I; 980 C.M.R. s. 7.02 (9)(b). Such a forecast should provide a sound basis for resource planning decisions. *Colonial Gas Company*, D.P.U. 96-18, at 4 (1996); *Bay State Gas Company*, D.P.U. 93-129, at 5 (1996); *Holyoke Gas and Electric Department*, D.P.U. 93-191, at 2 (1996); *Berkshire Gas Company*, 16 DOMSC 53, at 56 (1987).

II. ARGUMENT

A. The Company Has Failed to Meet Design Day Requirements.

Reliability is a critical component of the service obligation of gas local distribution companies ("LDCs"). The Department requires LDCs to show that service will not be disrupted by cold weather. The Department has stated that a company "... must have sufficient firm resources in place to serve its firm customer gas loads without relying on the uncertainties of the short-term non-firm market during periods of severe winter weather." *Colonial Gas Company*, DTE 98-90, fn. 6 (2000). The Department assesses a company's reliability and ability to serve all firm customers in cold weather by reviewing each company's planning data under normal year, design year and design day standards. *Colonial Gas Company*, D.T.E. 98-90, pp. 5-7 (2000). The design day, a long established planning requirement, represents the coldest day for which the company plans to provide service. *Colonial Gas Company*, DTE 98-90, fn. 6 (2000). KeySpan's design day is based on the coldest day during the past 20 years. Exh. KEY-1, p. 81.

The Company's filing combines the requirements and resources of all of KeySpan's Massachusetts, Boston Gas, Essex and Colonial. These companies, however, are not completely integrated--they comprise several separate and distinct gas service areas.[2] Exh. KEY-1 and Exh. AG-1-4. The Company's combined filing obscures the fact that KeySpan has not met the design day requirements for each of its service territories.

The record indicates that there is a need to acquire incremental capacity as early as 2003, even with the erroneous assumption that the new HubLine capacity will be available in 2002.[3]

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[2] Boston Gas Company and Colonial Gas Company each have two gas service areas, one served primarily by the Tennessee interstate pipeline and the other primarily by the Algonquin interstate pipeline. Although Boston Gas Company may be able to serve both of its service areas from the Tennessee pipeline, this flexibility is limited and not always available, as shown by the splitting of the service areas for capacity assignment purposes. Tr., pp. 38,126-128. Colonial has long had separate Lowell and Cape Cod service areas.

[3]The Company has entered into a precedent agreement for capacity on the HubLine facility effective with the facility's in service date, which currently is expected to be sometime mid 2003 (originally the in service date was November, 2002). The Department approved the Company's precedent agreement and related service agreements in D.T.E. 02-18. The Department has taken administrative notice of the testimony and evidence presented in D.T.E. 02-18 in the docket.

Exh. KEY-1, pp. 120-122 and Table G-23D. The Company currently has no capacity contract in place to correct this deficiency in its November 2001 long range resource and requirements filing. Tr., pp. 6-61.

The Company has presented a contingency analysis showing resources and requirements assuming a one year delay in the HubLine in service date. Exh. KEY-1, Tab VI, G Tables (HubLine Delay CASE). The Delay Case shows that the Company is relying on Propane to serve the deficiency created by the one year delay in HubLine, even though only Boston Gas and Colonial-Lowell dispatch Propane on the Design Day. Exh. AG-1-4, Attachment 1-4 (J). The combined forecast obscures the fact that the deficiency is most acute in the Colonial-Cape service area, where, based upon a review of data filed in the HubLine docket and the Company's testimony, it is apparent that a capacity shortfall exists for the up-coming winter, and there is not sufficient deliverability to serve the design day requirements. According to the Company's witness, Mr. Poe, the Company will be short on the Cape by 3,000 MMBtus if design day conditions occur this winter, D.T.E. 02-18, Exh. AG-2-4 and Tr., p. 62, and the Company is attempting to increase the volumes available under its interim contract with Algonquin to cover the deficiency.[4] Tr., pp. 61-62. Until such an agreement or another alternative is in place, the Company has a deficiency in the Colonial-Cape service area.

The Department should not approve a deficient plan; nor should it simply deny approval in this case. The record establishes that there is the imminent potential for the occurrence of a design day deficiency within the next 4-5 months. The Department should order KeySpan to resolve the deficiency immediately and re-file all documents showing not only a resolution of the deficiency, but a resolution that will result in the most reliable and least cost service to customers.

B. The Company Has Failed to Account for the Transfer or Loss of Cape Cod Customers.

Although the Company's witnesses testified that the Company expects to lose 1,100 customers on the Cape,[5] the supply plan in this case does not incorporate the loss of these customers.[6] Tr., p. 22. It is unclear, then, from the evidence in the record whether the transfer

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[4] The Company stated emphatically in the HubLine case that there were no alternatives to the HubLine on either Algonquin or Tennessee. It is unclear, then, how the interim agreement may be extended or include an increase in the volume. Tr., p. 35.

[5] A 1992 Agreement between Commonwealth Gas and Colonial Gas allowed Colonial Gas to serve certain customers in the Town of Plymouth on a temporary basis. KeySpan and NSTAR Gas currently have a petition before the Department requesting permission to transfer these customers back to NSTAR Gas. *See* D.T.E. 02-44.

[6] Apparently, the Company had been notified on November 16, 2001 by the other LDC that it would be seeking the transfer. Joint Filing of NSTAR and KeySpan, June 27, 2002, Attachment C.

will mitigate the Company's design day deficiency. *See* Exh. AG-RR-1 (indicates a reduction in the design day requirements of 2,000 MMBtus in 2002/03; however, the transfer terms are still being negotiated and the transfer date has not been established or approved by the Department). Given the controversy over the Company's ability to provide reliable service to the Cape under design day conditions, the Department should require the Company to submit a revised filing showing the impact of the loss of the 1,100 customers on the Company's resource and requirements.

C. The Supply Plan Does Not Reflect An Economic Use of the HubLine.

The Supply Plan contemplates use of the HubLine as a peaking resource rather than baseload resource. Treating the HubLine as a peaking resource is neither economic[7] nor consistent with the Department's approval of the HubLine Agreements. In fact, any dispatch of the HubLine under the Company's gas supply cost assumptions provided in D.T.E. 02-18 that results in a load factor of less than 7% renders the HubLine more expensive to customers than the LNG alternative on a cost per MMBtu basis. *See* Confidential Appendix A attached hereto.

In D.T.E. 02-18 the Company received approval of its contract with Algonquin for year-round transportation of natural gas from a proposed interconnection in Beverly to various take stations within the Company's service territories. The arrangements are referred to generally as the HubLine agreements. During the proceedings in the HubLine case, the Company's witness testified that the Company had yet to sign or even negotiate supply contracts for delivery on the HubLine. DTE 02-18, Tr., p. 42 and DTE 01-105, Tr., p. 113. The Department's approval of the HubLine agreements was based on a Company analysis that assumed that the HubLine capacity was utilized at the 100% load factor level and that used the historic cost of gas at Dracut (which is a trading hub for Sable Island gas)as a proxy for the HubLine cost of gas. This economic analysis showed that the HubLine was the most economic alternative examined. However, in this docket, the Company's supply plan shows the HubLine, during normal conditions, is dispatched to serve the Cape at an average annual load factor of less than 5%.[8]
Should the Company actually use the HubLine at levels approximating 100% load factor it will

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[7] It must be noted that the HubLine negotiated rate to the Cape is in excess of the recourse rate, the rate offered through the HubLine tariff to all customers. It is only the Company's expectation that a surcharge for use of the Algonquin G-Lateral to deliver gas will cause the total delivery rate for tariffed rate customers to be in excess of the negotiated rate promised the Company. Tr., pp. 82-84.

[8] On a normal year basis, the Company's supply plan indicates that the HubLine will be used to deliver gas to the Cape at an average load factor of 4.5%. Exh. AG-1-4, Attachments (H) and (I) (Average of the years 2002/03 through 2005/06 for HubLine Resource, line 8 for Table G-22N (Revised), Colonial Gas Company-Cape Cod Division).The average load factor is calculated as the average of the annual load factors where 2002/03 is 3.5%, 2003/04 is 3%, 2004/05 is 5.9% and 2005/06 is 5.5%, for an average of 4.5%. Although the HubLine is dispatched at annual load factors greater than 9% under design year conditions, the Department determines that a company's long range resource and requirements' plan is the least cost on an over-all basis.

result in “backing-off” another resource that is incorporated in the least cost plan. By backing off, or not fully utilizing, another resource, the Company may have stranded costs that it will attempt to recover from its default service (CGA) customers. The Attorney General is not only concerned that the Company may under-utilize the HubLine, but also that the Company will have excess capacity the costs of which will be passed on captive CGA (default service) customers. Customers should not pay for the Company’s contracting excesses. The Department must review the economics of the Company’s plan and ensure that captive customers are not paying for costs related to the Company’s contracting for excess capacity. No further burden should be imposed on customers who have already born the costs of capacity contract buyouts in the amount of $5 million. *See* Exh. AG-1-1, Tr., pp. 96-97.

D. The Company Should Account for the Return of Pipeline Capacity.

On July 1, 2002, the Company received of 35,000 MMBtus of pipeline capacity on the Tennessee pipeline as a result of the Enron bankruptcy.[9] This capacity represents only a portion of the USA capacity assigned to Enron .[10] The remaining USA capacity is on the Iroquois pipeline. As of the date of the hearing, the Company had not been notified whether or not the Iroquois capacity would be returned. The Company’s witness, Ms. Danehy, indicated that if the Iroquois capacity were to be returned, the Company would seek to dispose of the whole segment or incorporate it into the Company’s portfolio. Tr., pp. 73-74.

Given the potential for the costs of excess capacity being passed on to default customers as discussed earlier, the Department should require the Company to provide an assessment of the level of excess capacity the Company anticipates having during the forecast period, the cost of the excess, and how it plans to mitigate these costs.

III. CONCLUSION

For these reasons, the Department should require the Company to file revisions and supporting documentation that assure the Company’s supply and resource plan is least cost and is designed to provide reliable service under standard planning criteria.

Additionally, the Attorney General is concerned that gas companies are either not filing contracts for approval as required by statute or are making late filings with demands for expedited treatment. KeySpan filed for approval its HubLine contracts well after they were

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[9] The Company had released the capacity to Enron as part of a restructuring of its Imperial Oil contract for western Canadian gas which matter was approved by the Department in 1997. D.T.E. 97-104 (1997).

[10] The capacity on the Canadian pipelines was transferred to Enron’s Canadian affiliate. This company has not filed for bankruptcy and therefore the Company does not anticipate the return of the Canadian pipeline capacity. Tr., p. 73.

negotiated and signed and, in the case of the interim service agreement, well after the effective date. The late filing then required the Company to seek and receive expedited review and approval. The Attorney General supports the Department's attempt to discourage and eliminate this type of behavior. *See* Order D.T.E. 02-18, p. 11 (directing ". . . all LDCs to submit any contract containing a provision subjecting the price to be paid thereunder for gas for review and determination by the Department, pursuant to M.G.L. c. 164, § 94A, upon execution of the contract."). The Department should mandate that any filing which results from its order in this proceeding comply with the directives in D.T.E. 02-18.

Very truly yours,

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Wilner Borgella, Jr.
Assistant Attorney General

WB/wb
cc: Kathryn Sedor , Hearing Officer (w/enc.)
Service List (w/enc.)